

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**Before the Honorable John F. Robbenhaar
United States Magistrate Judge**

Clerk's Minutes

18cv476 JCH/JFR

Pepe v. Casa Blanca Inn & Suites, LLC,

Tuesday, July 9, 2019, at 10:30 a.m.

PLAINTIFF'S ATTORNEY PRESENT:

D. Rusch Gathings, Paul Cohen

DEFENDANT'S ATTORNEY PRESENT:

Robert C. Evans

TYPE OF PROCEEDING:

Telephone Status Conference
Total Time – 33 minutes

COURT'S NOTES/RULINGS:

- This matter was set for a status conference to check the parties' desire for a settlement conference. Trial is set for 2/24/2020.
- Neither of Plaintiff's counsel appeared in a timely manner. They did, however, enter their appearances after the Court contacted them by telephone. The Court admonished counsel for allowing the hearing to commence without their scheduling and recognition of the hearing, which was set two months in advance. The Court instructed Plaintiff's counsel to be more mindful and organized regarding matters scheduled in this Court.
- The Court next addressed Defendant's pending Motion to Compel a Rule 35 Examination and to Reset Case Deadlines, Including Trial, in this case, (Doc. 44) (filed 6/13/19). Despite the parties' preliminary scheduling of the Rule 35 Independent Medical Evaluation ("IME") on July 1, 2019, that exam did not proceed due to the parties' disagreements about the manner and scope of that evaluation.
- The Court said it would issue a separate order regarding the IME and informed the parties it was going to rule that the IME should be performed during July 2019 (and not later), in Albuquerque. The exam may not be videotaped nor photographed, and no third party may be present, *i.e.*, Plaintiff's counsel. The Court said Defendant's offer to share costs related to Plaintiff's attendance at the IME (*i.e.*, airfare, lodging and transportation) was reasonable, and the Court would not order any additional costs to be imposed on Defendant. The Court also ordered Defendant to instruct Dr. Legant to produce his report to Plaintiff and Defendant 10 days after the IME occurs.

- The Court ordered Defendant to offer proposed dates for the IME to Plaintiff by close of business Thursday, July 11, 2019. Plaintiff shall promptly confirm her availability and coordinate reasonable travel accommodations to Albuquerque for the IME in July 2019. Defendant anticipates that Plaintiff will need one night of lodging in New Mexico.
- The Court would not extend discovery deadline dates because of the current trial setting before District Court Judge Herrera on February 24, 2020. The Court encouraged the parties to notify this Court if they obtain a rescheduled trial date, and then this Court could consider modifying discovery dates. Otherwise, the Court will permit the Rule 35 examination to occur in July, with a report to issue to both parties ten days after the scheduled examination. The Court said that Plaintiff's deposition should be scheduled for a date after the parties receive the IME report.
- If Defendant chooses to designate its Rule 35 examination doctor as an expert under Rule 26, then it must seek to comply with all current deadlines regarding the same. Plaintiff would be afforded a reasonable amount of time to designate a rebuttal expert under the Federal Rules of Civil Procedure.
- The Court asked the parties about their interest in setting a Settlement Conference with this Court, and although both sides expressed an interest, Plaintiff's counsel asked if the Court could schedule it in conjunction with Plaintiff's deposition to save Plaintiff the need to travel back to Albuquerque for that hearing. The Court explained that a Settlement Conference immediately after a deposition (or before) did not seem practical or helpful. Plaintiff's counsel asked if Plaintiff could appear telephonically, and the Court explained that in-person settlement conferences are preferred. The parties acknowledged they could also explore settlement negotiations outside the Court's involvement.
- The Court will set another status conference for August-September.
- The Court concluded the conference.